



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/630,552	08/01/2000	Yutaka Nakamura	101136-00013	6674

7590 03/27/2003
Arent Fox Kintner Plotkin & Kahn
1050 Connecticut Avenue NW Suite 600
Washington, DC 20036-5339

EXAMINER

LUU, THANH X

ART UNIT	PAPER NUMBER
----------	--------------

2878

DATE MAILED: 03/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

09/630,552

Applicant(s)

NAKAMURA, YUTAKA

Examiner

Thanh X Luu

Art Unit

2878

-- The MAILING DATE of this communication app ars on the cover sheet with th correspondenc address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2002 and 03 February 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 31, 2002 has been entered.

Claims 1-3 are currently pending.

Claim Objections

2. Claim 1 is objected to because of the following informalities:

In claim 1, line 9, "that position" lacks proper antecedent basis.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-3 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding claims 1-3, it appears there is insufficient support for an embodiment in which a pitch of the pattern marks of only a portion of the leveling rod is obtained.

Page 8, lines 13-14 states that the width of each bar mark 11 is determined. Since the marks are on the entire leveling rod (see Figure 1), it is unclear how only a portion of the leveling rod is examined.

In response, Applicant should cite to parts of the specification in which such an embodiment is supported. Otherwise, Examiner reminds Applicant that no new matter may be added.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3, as understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Kumagai et al. (U.S. Patent 5,742,378).

Regarding claims 1-3, Kumagai et al. disclose (see Figure 13) an automatic focusing mechanism having a telescope for sighting a leveling rod (see Figure 2) with pattern marks at an equal pitch between each mark, and a photoelectric device (15) for converting an image sighted by the telescope into an electric signal with a set range to automatically adjust a focus on the rod, the mechanism comprising: driving means (17) for moving a focusing lens (112) of the telescope from one end toward an opposite end of a movable range of the focusing lens; pitch computing means (15 and 166; see also

Art Unit: 2878

Figures 12 and 14) for obtaining the pitch of the pattern marks as claimed to obtain a distance (see column 4, lines 20-25) based on the pitch; and fine adjusting means (see column 14, lines 10-15) for moving the focusing lens to a position corresponding to the distance. Furthermore, Kumagai et al. disclose one end is a position corresponding to an infinite distance; the focusing lens is inherently driven toward the objective lens to sense the presence of the rod for pitch determination. Furthermore, the entire targeted area is not scanned for focusing; only the areas having the leveling rods are detected (see column 2, lines 53-56).

Response to Arguments

7. Applicant's arguments filed December 31, 2002 have been fully considered but they are not persuasive.

Applicant asserts that the claimed invention does not require scanning an entire target area, in contrast with Kumagai et al. However, Kumagai et al. also do not scan an entire area for focusing. That is, Kumagai et al. (see column 2, lines 53-56) only detects the leveling rod for focusing and does not scan an entire targeted area or scene for focusing. Thus, as set forth above, this rejection is proper.

Conclusion

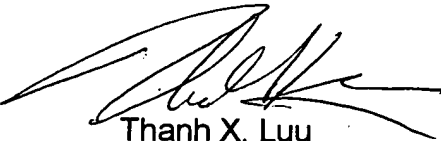
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh X. Luu whose telephone number is (703) 305-0539. The examiner can normally be reached on Monday-Friday from 6:30 AM - 4:00 PM.

Art Unit: 2878

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Porta, can be reached on (703) 308-4852. The fax phone number for the organization where the application or proceeding is assigned is (703) 308-7722.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

txl
March 25, 2003

A handwritten signature in black ink, appearing to read 'Thanh X. Luu', with a stylized flourish extending to the right.

Thanh X. Luu
Patent Examiner